

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 541

Child Custody and Visitation

SPONSOR(S): Frishe

TIED BILLS: None

IDEN./SIM. BILLS: CS/SB 904

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice & Courts Policy Committee		Bond	De La Paz
2) Health Care Services Policy Committee			
3) Criminal & Civil Justice Policy Council			
4) Full Appropriations Council on General Government & Health Care			
5)			

SUMMARY ANALYSIS

This bill amends family law related to parenting plans:

Current law provides that a court may ask a licensed psychologist to prepare a proposed parenting plan. This bill adds other mental health professionals that may be called upon to recommend a parenting plan.

Current law allows a court to presume that a parent who has been convicted of a felony that involves domestic violence should not have shared parental responsibility. This bill lowers the threshold to first degree misdemeanors.

Current law allows a court to modify a parenting plan upon a showing of a substantial change in circumstances. This bill requires that the substantial change in circumstance be involuntary.

Current law provides a process by which a parent can apply for court permission to relocate with a child. This bill amends the procedures and requires courts to conduct hearings within a set period of time.

This bill also updates and corrects language throughout the statutes relating to parenting plans.

This bill appears to have an indeterminate negative fiscal impact on state government. This bill does not appear to have a fiscal impact on local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Parenting Plan - In General

A parenting plan is a document that details the legal rights and responsibilities related to children of unmarried parents living apart. Section 61.046(13), F.S., provides that a parenting plan can be created by agreement of the parents or, if the parents cannot agree, by the court. A court has the power to refuse to accept a settlement agreement between parents that is not in the best interest of a child. This bill amends s. 61.046(13), F.S., to recognize this traditional power by providing that the court may reject the parents' agreement and set a parenting plan.

Section 61.046(14), F.S., defines "parenting plan recommendation" as a recommended parenting plan created by a psychologist licensed under chapter 490. This bill amends the definition to add that a parenting plan recommendation may also be prepared by a psychotherapist licensed under chapter 491, a guardian ad litem appointed pursuant to s. 61.401, or a licensed mental health professional appointed by the court pursuant to Rule 12.363, Florida Family Law Rules of Procedure.

Section 61.13(2)(b), F.S., requires that a parenting plan must include certain information. This bill adds that a parenting plan must include the address to be used for school registration.

Shared Parental Responsibility - Domestic Violence Presumption

Section 61.13(2)(c), F.S., requires the court to determine all matters relating to parenting and time-sharing in the best interest of the child. The paragraph includes a presumption in favor of shared parental responsibility, but provides that evidence that a parent has been convicted of a felony of the third degree or higher involving domestic violence, creates a rebuttable presumption of detriment to the child. If such presumption is not rebutted, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm.

Section 741.28, F.S., defines domestic violence as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." Under Florida law, simple assault and simple battery are first degree misdemeanors, the remaining offenses listed in the definition of domestic violence describe felony offenses.

This bill amends the presumption in s. 61.13(2)(c), F.S., to lower the threshold to include the first degree misdemeanor offenses of assault or battery that involve domestic violence. The current statutory language is awkward and perhaps inaccurate, the amendment by this bill does not correct the flaw, see Drafting Issues or Other Comments herein.

This bill also amends s. 61.13(3)(m), F.S., to require that, where a court takes domestic violence into account in determining a parenting plan, the court must make a written finding that evidence of domestic violence was considered.

This bill also amends s. 741.30(5)(a), F.S., relating to domestic violence injunctions, to specify that a temporary domestic violence injunction may also create a temporary parenting plan.

Parenting Plan - Modification

Section 61.13(3), F.S., creates criteria for use by the court in determining the best interests of a child, and requires that the primary consideration of a court, in creating or approving an original or modified parenting plan, is the best interest of the child. Under current law, a parent seeking a modification of a parenting plan must show a substantial change in circumstances. This bill amends s. 61.13(3), F.S., to provide that modification of a parenting plan "requires a showing of a substantial, involuntary change in circumstances before determining the child's best interests."

By including the term "involuntary", this bill appears to have the effect of substantially limiting modifications of parenting plans. For instance, it appears that under this provision a parent would not be able to seek a modification of a parenting plan should the parent voluntarily move to better home that may be in a different school zone, voluntarily move to a smaller home to lower family expenses, voluntarily marry and thereby have another adult in the home and perhaps move into the spouse's home, or voluntarily seek a promotion or better job that would in any way affect the time-sharing schedule. As child support is part of the parenting plan, it also appears that, should one parent voluntarily seek and get a promotion, pay raise, or new job with such an income difference as to constitute a substantial change in circumstances, the other parent may not be able to seek a modification of the child support as the change in circumstances was voluntary.

Parental Relocation

Section 61.13001, F.S., governs permanent parental relocation with a child. It requires that a parent moving more than 50 miles for more than 60 days must notify the other parent of the move. If the other parent objects, the parent moving must seek court approval for the relocation. The initial petition is served on the other parent, but is not filed with the court in order to give the parties time to discuss the matter.

As to parental relocation, effective October 1, 2009, this bill:

- Repeals the requirement that a specific notice be given.
- Repeals the requirement that the moving parent not file the petition with the court until after the parties have had a chance to discuss the matter.
- Prohibits relocation while the petition is pending.
- Repeals the 30 day deadline for replying to a petition seeking relocation.
- Requires that a hearing on temporary relocation must be held within 30 days of filing, and a final hearing on relocation must be held within 90 days.

Other

This bill also :

- Amends family law statutes to refer to "parents" rather than "parties."

- Amends family law statute to refer to "access" to a child rather than "visitation" with a child.
- Removes dated language in s. 61.13(1)(d), F.S., regarding child support orders entered before January 1, 1985.

B. SECTION DIRECTORY:

Section 1 amends s. 61.046, F.S., regarding definitions applicable to ch. 61, F.S.

Section 2 amends s. 61.13, F.S., regarding child support and time-sharing.

Section 3 amends s. 61.13001, F.S., regarding parental relocation with a child.

Section 4 amends s. 61.183, F.S., regarding mediation.

Section 5 amends s. 61.20, F.S., regarding social investigations regarding parenting plans.

Section 6 amends s. 61.21, F.S., regarding parenting courses.

Section 7 amends s. 61.30, F.S., regarding child support guidelines.

Section 8 amends s. 741.30, F.S., regarding domestic violence.

Section 9 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate, see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Office of the State Court Administrator (OSCA), this bill requires many of the Florida Supreme Court Approved Family Law Forms to be amended and new forms to be created, and the effective date of this bill may not provide the time necessary to create new forms, amend existing forms, and seek approval and adoption of the proposed forms from the Florida Supreme Court.

In addition, the bill requires the court to specifically acknowledge in writing when evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect is considered by the court in making its evaluating the best interest of the child.

Additionally, this bill requires that, absent good cause, a hearing must be held within 30 days after filing the petition for relocation, and a nonjury trial be held within 90 days after notice to set cause for trial is filed. Meeting such time frames in a civil case may be impossible due to limited judicial resources.

The fiscal impact of the bill cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial and staff workload as a result of the foregoing.¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Lines 617 to 621 require a court to conduct a hearing within 30 days of the filing of a motion for temporary relocation, and require that a final hearing on relocation be conducted within 90 days. Article V, section 2(a) of the Florida Constitution provides that the Supreme Court must adopt rules for practice and procedure in all courts. If the court were to interpret these time limits as a rule of court, the court would have the prerogative to invalidate these time limits as an infringement upon the court's rulemaking power if the court found that the time limits impermissibly encroached on the court's authority to adopt rules of practice and procedure.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

At line 158-159, current law refers to the offense of domestic violence by reference to s. 741.28, F.S. That section, however, does not create an offense but instead defines "domestic violence" for purposes of sentencing enhancement.

Comments of the Department of Revenue:

Federal law and s. 61.1824(1), F.S., required that child support be paid to the State Disbursement Unit in Title IV-D cases and in non-Title IV-D cases in which the initial support order was issued on or after January 1, 1994 and the obligor is paying through income deduction. This reduces the burden and expense on employers by providing one payment location versus individual counties. Noncompliance with federal title IV-D state plan requirements places at risk the State's Title IV-D funding and a portion of the state's Temporary Assistance for Needy Families block grant. Current law as reflected in section 2 of the bill is not in conformance with federal and other state law requirements for certain child support payments to be made to the State Disbursement Unit. The proposed changes to the bill do not create the nonconformance; the Department identified the inconsistency while analyzing the bill.²

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

¹ Office of the State Courts Administrator, *Judicial Impact Statement, SB 904* (March 6, 2009).

² Department of Revenue bill analysis of HB 541, March 10, 2009.